



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

February 27, 2003

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2003-1279

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177063.

The Texas Department of Criminal Justice (the "department") received a request for information relating to its investigations in case numbers SC.15.1849.02.NF (the "administrative case") and 02-0538TDCJ (the "criminal case"). You state that the department has released some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that some of the requested information is the subject of Open Records Letter No. 2002-6779 (2002). You inform us, however, that there has been a change in the facts and circumstances on which the prior ruling is based. Therefore, the department may no longer rely on Open Records Letter No. 2002-6779 (2002) with regard to the information that is the subject of that decision. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination for purposes of Gov't Code § 552.301).

Next, we address your claim that chapter 552 of the Government Code does not apply to some of the requested information. This office has concluded that specific records held by a community supervision and corrections department regarding individuals on probation and subject to the direct supervision of a court are not subject to chapter 552 because such records are held on behalf of the judiciary. *See* Open Records Decision No. 646 (1996); *see also* Gov't Code § 552.003(1)(B) (definition of governmental body does not include judiciary). You state that some of the information that pertains to the administrative case

involves individuals who are on probation. We note, however, that this information is held by the department, not by a community supervision and corrections department. Accordingly, we find that the requested information that relates to probationers is subject to chapter 552 of the Government Code and must be released unless it comes within the scope of an exception to disclosure under chapter 552. You do not claim that the information that relates to probationers is excepted from disclosure under chapter 552. Therefore, you must release that information.

You also contend that information pertaining to the administrative case is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. You assert that some of the information pertaining to the administrative case is confidential under section 1703.306 of the Occupations Code. Chapter 1703 of the Occupations Code codifies the Polygraph Examiners Act. *See* Occ. Code § 1703.001. Section 1703.306 provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Id. § 1703.306. We have marked the submitted information that is confidential under section 1701.306. You do not inform us, nor is it otherwise clear, that the requestor has a right of access to the marked information under section 1703.306. Therefore, you must withhold the marked information under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

You also raise section 552.134 of the Government Code, which relates to inmates of the department and states that

[e]xcept as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Section 552.029 of the Government Code provides that notwithstanding section 552.134, eight specified categories of "information about an inmate who is confined in a facility operated by or under a contract with [the department are] subject to required disclosure[.]" These eight categories of information include

basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Gov't Code § 552.029(8). Thus, the legislature explicitly made section 552.134 subject to section 552.029.

You state that the information pertaining to the administrative case includes the names and statements of inmates of the department. We agree that section 552.134(a) is applicable to the names, nicknames, departmental identification numbers, and statements of inmates contained in the documents that pertain to the administrative case. We also have marked other information pertaining to the administrative case that comes within the scope of section 552.134. We also note, however, that the administrative case relates to an alleged crime involving inmates of the department. The department must disclose basic information about that incident under section 552.029(8). The basic information that is subject to disclosure under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. The rest of the information pertaining to the administrative case that relates to inmates of the department is excepted from disclosure under section 552.134.

The information pertaining to the administrative case also includes a social security number that the department must withhold under section 552.117 of the Government Code. Section 552.117(3) excepts from public disclosure the home address, home telephone number, social

security number, and family member information of an employee of the department, regardless of whether the employee complied with section 552.1175. We have marked the information that you must withhold under section 552.117. We note that the requestor has a special right of access to his own social security number under section 552.023.¹

The information pertaining to the administrative case also includes the social security number of one of the probationers. That social security number may be excepted from disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security number in question is confidential under section 405(c)(2)(C)(viii)(I). You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the department to obtain or maintain a social security number. Thus, we have no basis for concluding that this social security number was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. We caution the department, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number, the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

You seek to withhold the information that pertains to the criminal case under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

Section 552.108(a)(2) is applicable only if the information in question relates to a criminal case that concluded in a result other than a conviction or deferred adjudication. You state that the information pertaining to the criminal case involves allegations of criminal conduct that were investigated by the department and closed after a grand jury no-billed the case. Based on your representations and our review of the information in question, we agree that section 552.108(a)(2) is applicable in this instance.

¹*See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body relating to person that is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body for information concerning himself).

We note that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). The department must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the information that pertains to the criminal case under section 552.108(a)(2).

In summary, the department must withhold some of the information that pertains to the administrative case under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The department must withhold the information pertaining to the administrative case that relates to inmates of the department under 552.134, but must release basic information relating to an alleged crime involving inmates under section 552.029. The social security number of an employee of the department other than the requestor must be withheld from disclosure under section 552.117(3). The probationer's social security number may be excepted from disclosure under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. The department may withhold the information that pertains to the criminal case under section 552.108(a)(2), but must release basic information in accordance with section 552.108(c). The department must release the rest of the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J W Morris III", written over a horizontal line.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 177063

Enc: Submitted documents

c: Mr. Richard K. Watkins
P.O. Box 431
Huntsville, Texas 77342
(w/o enclosures)